

FIGHTING CSC CASES

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The Good 'Ole Days

- Caldwell paid Boyce to burn his house. While incarcerated, Boyce told this to his cellmate, Parish, Jr., who informed his attorney, Gene Adams, who notified SLED.
- In *State v. Huggins*, 275 S.C. 229, 269 S.E.2d 334 (1980) we held the fact testimony is hearsay is unimportant if the declarant testifies and is available for cross examination. Boyce and Parish testified at trial and both were cross examined. *State v. Caldwell*, 322 S.E.2d 662, 283 S.C. 350 (S.C., 1984)

2006 Act No. 342

"This act may be cited as the
'Sex Offender Accountability and
Protection of Minors Act of 2006'."

VIDEOS!

§17-23-175 Admissibility of out-of-court statement of child under twelve; determination of trustworthiness;

- (A) In a general sessions court proceeding or a delinquency proceeding in family court, an out-of-court statement of a child is admissible if:
- (1) the statement was given in response to questioning conducted during an **investigative interview** of the child;
- (2) an **audio and visual recording** of the statement is preserved on film, videotape, or other electronic means, except as provided in subsection (F);
- (3) **the child testifies at the proceeding** and is **subject to cross-examination** on the elements of the offense and the making of the out-of-court statement; and
- (4) the court finds, in a hearing conducted outside the presence of the jury, that the totality of the circumstances surrounding the making of the statement provides **particularized guarantees of trustworthiness**.

RULE 801-DEFINITIONS

- (d) **Statements Which Are Not Hearsay.** A statement is not hearsay if –
 - (1) **Prior Statement by Witness.** The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is
 - (D) consistent with the declarant's testimony in a criminal sexual conduct case or attempted criminal sexual conduct case where the *declarant is the alleged victim and the statement is limited to the time and place of the incident*; or

Note:

- Subsection (d)(1) changes the law in South Carolina.
- Subsection (D), which is not contained in the federal rule, was added to make admissible in criminal sexual conduct cases evidence that the victim complained of the sexual assault, limited to the time and place of the assault. Subsection (D) is consistent with South Carolina law. Jolly v. State, 314 S.C. 17, 443 S.E.2d 566 (1994).

FORENSIC INTERVIEWS

2009

- *State v. Douglas*, 671 S.E.2d 606, 380 S.C. 499 (S.C., 2009) DEF- RATAc interviewer not an expert-Gwen Herod

2012

- **State v. Whitner**, 399 S.C. 547, 732 S.E.2d 861 (S.C., 2012)ST- §17-23-175 [*admitting video interview of child*] is a valid legislative enactment.
- **State v. McKerley**, 397 S.C. 461, 725 S.E.2d 139 (S.C. App., 2012)DEF- interviewer testimony indicates she **believed the victim was truthful**-Heather Smith

2013

- **State v. Kromah**, 401 S.C. 340, 737 S.E.2d 490 (S.C., 2013) ST- expert forensic interviewer, '**compelling finding**' - Heather Smith

2014

- **State v. McKerley**, 397 S.C. 461, 725 S.E.2d 139 (S.C. App., 2012) DEF- interviewer testimony indicates she **believed the victim was truthful**.
- **State v. Portillo**, 408 S.C. 66, 757 S.E.2d 721 (S.C. App., 2014) DEF-error to find expert in abuse interviewing, victim had **symptoms of PTSD** (no diagnosis was made)-Dr. Donald Elsey

“CHILD ABUSE DYNAMICS”

2015

- **State v. Brown**, 768 S.E.2d 246, 411 S.C. 332 (S.C. App., 2015) ST-expert Child Abuse Dynamics-Galloway-Williams

2016

- **State v. Barrett**, 416 S.C. 124, 785 S.E.2d 387 (S.C. App., 2016)ST-Child Sexual Assault Accommodation Syndrome –Twitty
- ***State v. Hamilton** (S.C. App., 2016)ST-Child Abuse Dynamics 2016-UP-379 Galloway-Williams
- **State v. Jones**, 417 S.C. 319, 790 S.E.2d 17 (S.C. App., 2016)ST-Child Abuse Dynamics-Galloway-Williams
- **State v. White**, 416 S.C. 135, 784 S.E.2d 695 (S.C. App., 2016)ST-forensic interviewer -expert in the Child Abuse Dynamics; poor audio-Molly Wharton, LSW

2017

- **State v. Portillo**, 408 S.C. 66, 757 S.E.2d 721 (S.C. App., 2014) DEF-error to find expert in abuse interviewing , “she was just telling what she was seeing”. Dr. Donald Elsey
- ***State v. Purnell** (S.C. App., 2017) ST-Child Abuse Dynamics 2017-UP-272 July 5, 2017
 - Sup.Ct. dismissed cert as improvidently granted July 24, 2019 2019-MO-032

2018

- **State v. Jones**, 423 S.C. 631, 817 S.E.2d 268 (S.C., 2018)ST-Std to use to qualify expert Shauna Galloway-Williams
- ***State v. Miller** (S.C. App., 2018)ST-Child Abuse Dynamics- 2018-UP-121 March 21, 2018 Allison Foster
- ***State v. Coleman** (S.C. App., 2018)ST -expert Delayed Disclosure-2018-UP-090 Feb. 21,2018 Laurie Caldwell
- ***State v. Crews** (S.C. App., 2018)DEF-error to charge jury victim's testimony need not be corroborated 2018-UP-339 July 25,2018

2019

- **State v. Makins** (S.C. App., 2019) DEF-both as expert in child sexual abuse trauma & treated Victim-Opinion No. 5683-September 4, 2019-Kristin Rich
- **State v. Stroman** (S.C. App., 2019)ST-forensic interviewer - Child Abuse Dynamics & Delayed Disclosure 2019-UP-281 August 7, 2019 Heather Smith
- **State v. Daugherty** (S.C. App., 2019)ST-general behavioral characteristics of child sex abuse victims 2019-UP-203 June 5,2019 Carole Swiecicki (Low Country Children's Ctr)

- ***State v. Johnson** (S.C. App., 2018) DEF- Forensic Interview-tell the truth-2018-UP-109 -Dr. Allison Foster
- **State v. Jones**, 423 S.C. 631, 817 S.E.2d 268 (S.C., 2018) ST- Std to use to qualify expert-Shauna Galloway-Williams
- **State v. Simmons**, 423 S.C. 552, 816 S.E.2d 566 (S.C., 2018) DEF- can't use MD to repeat kids identity under 801(medical diagnosis)
- **Thompson v. State**, 814 S.E.2d 487 (S.C., 2018) DEF-PCR trial atty deficient for not objecting to both inadmissible hearsay & inadmissible bolstering

WHAT DO WE DO NOW?

THE PLAYERS

- The Prosecution “TEAM” with Prosecution “NAMES”
- 1. The “Victim”- Sara Jones
- 2. The “Outcry Witness”-person victim told first- usually a parent
- 3. The “Investigator”
- 4. The CAC “Forensic” Interviewer
- 5. The “Expert”- “General Sex Abuse Dynamics!”

DON'T PLAY THEIR
GAME!

The “Victim” - Sara Jones

THE “STORY TELLER”

- What do you want to know about Sara?
- Who do you talk to?
- How do you get the info?
- Claims against other people?
- Social media?
- School records (FERPA), talk to teachers, neighbors, friends, step parents, etc.

The “Outcry Witness” – Mrs. Jones

FIRST TO HEAR “THE STORY”

- When you first heard her story you didn't believe it.
 - She had made things up in the past.
 - But you had to believe her.
-
- When you took Sara to the CAC to be videoed, you told her why she was going there
 - You reminded her that she was supposed to tell about the story that her dad touched her.

The “Investigator”

THE “REPORT MAKER”

- They don’t “Investigate” any more. They type up a “report” to document the story.
- They are required to make a report of the story.
- They make a phone call to CAC to set up a “Forensic Interview”.
- “Nothing further”.

- You were told that someone said that Sara said she had been abused.
- You talked to Mrs. Jones who said what Sara said.
- You then talked to Sara.
- You didn't challenge or dispute anything she said.
- You didn't dig into her story for details and specifics.
- You made a report of her story.

- You have the ability to video record people.
- You can video record at you office or on you cell phone.
- You didn't record Sara telling her story or Mrs. Jones telling you her story about Sara's story.
- You talked to Mr. Jones about Sara's story. He told you it was absolutely not true. You didn't record his statement did you? The jury could have seen how shocked he was when you told him about the story.

- You are required by law to type up a report of what they said.
- Once you typed up your report, you called the Child “ADVOCACY” Center” .
- They are “Advocates” for people who say they were abused.
- You asked them make a video tape of Sara telling the story.
- After that you didn’t do any other “investigating”.

The CAC “Forensic” Interviewer

THE “VIDEOGRAPHER”

- You talked to the mom when she got to the CAC.
- You knew that she told Sara why she was being brought there.
- Sara knew that you were going to ask her about the story that her dad touched her.
- Sara was expected to tell you about her story that her dad touched her.
- The expectation was that she was there to repeat the story.

- You placed her in a room with a video camera.
- You expected her to repeat the story that you had been told.
- You asked her questions about her story.
- You continued to ask her questions until she told the story that you were told that she had told her mom.
- You never spoke to her again?

- You don't challenge the story - ever claimed anyone else did such a thing with you?
- You don't investigate the story - what were the home dynamics at the time? Divorce, sibling issues, attention getter, being strictly punished, does she have a history of telling untrue stories?
- You don't ask for specifics - specific dates, what had occurred the day before or after, don't ask questions that could be verified or proven incorrect by other people or evidence, etc.

State v Makins , Opinion No. 5683 September 4, 2019

- A witness should avoid statements:
 - explaining that the child was told to be truthful;
 - expressing a direct opinion as to a child's veracity or tendency to tell the truth;
 - indirectly vouching for the child's believability, such as a statement that the interviewer has made a "compelling finding" of abuse;
 - indicating to a jury that the interviewer believes the child's allegations in the current matter; or
 - providing an opinion that the child's behavior indicated the child was telling the truth.
- citing State v Kromah, 737 S.E.2d 490 at 360 (2013)

The Expert

“General Sex Abuse Dynamics”

“MIRRORED TESTIMONY”

- *State v. Brown*, 768 S.E.2d 246, (S.C. App., 2015)

The fact that her testimony corroborated some of the minor victims' reasons for delaying disclosure of the abuse does not mean her testimony improperly bolstered their accounts.

- Galloway-Williams

- They can become withdrawn for all sorts of reasons. Name some.
- They have nightmares for all sorts of reasons. Name some.
- They wet the bed for all sorts of reasons. Name some.
- They do poorly in school for all sorts of reasons. Name some.

THE PROFFESIONAL “SPECULATOR”

- You did not interview Sara Jones.
- In fact, you’ve had no personal contact with her.
- You’ve never treated or counseled Sara Jones.
- In fact, you don’t even know if Sara Jones “needs” treatment or counseling.
- Who have you spoken to about the facts of this case in order for you to be here today? (Solicitor?)
- So you know the story she told about abuse.

-OR-

- You know anything about the story Sara told?
- You know anything about the response of Mr. Jones to this story?.
- You know anything about what has occurred with Sara Mrs. Jones or Mr. Jones since the story was told?

- You do not know whether Sara was sexually abused.
- You're not here to tell the jury that are you?
- Your testimony here is as an opinion witness only, not a fact witness.
- You're just talking about things "in general".
- You don't know if this story is true or not do you?

- You have talked to the Solicitor about this case?
- How many times?
- Last 5 times you testified in criminal court – were you a witness for the prosecution?
- What about the 5 times before that?
- And the 5 times before that? (etc.)

- If this story is in fact **not true**, then your statements today would be irrelevant?
- The Prosecutor hopes that your statements today will sway the jury to help convict Mr. Jones.
- If this story is in fact not true, your statements today might sway the jury to convict an innocent person.
- That could be a possibility, right?
- Would you want that?